

# MEMORANDUM

**TO:** Members, Clark Fork Basin Water Management Task Force (Task Force)  
**FROM:** Gerald Mueller  
**SUBJECT:** Summary of the June 5, 2006 Task Force Meeting  
**DATE:** June 6, 2006

## Participants

The following people participated in the Task Force meeting:

### *Task Force Members:*

Gail Patton	Sanders County Commissioner
Bill Slack	Flathead Joint Board of Control
Fred Lurie	Blackfoot Challenge
Jim Dinsmore	Upper Clark Fork Steering Committee/Granite Conservation District
Nate Hall	Avista
Holly Franz	PPL Montana, LLC
Marc M. Spratt	Flathead Conservation District/Flathead Chamber of Commerce

### *Ex Officio*

Rep. Joey Jayne	HD 15
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### *Staff:*

Gerald Mueller	Consensus Associates
Mike McLane (DNRC)	Montana Department of Natural Resources and Conservation

### *Other:*

Phil Tourangeau	Confederated Salish and Kootenai Tribes (CSK&T)
Dr. David Shively	UM Department of Geography

## Meeting Agenda

- May 1, 2006 Meeting Summary
- HJR 3 Update
- Ground Water Conferences
- DNRC Ground Water-Surface Water Working Group Update
- Ground Water Conferences
- Thomson Falls Cogeneration Water Rights Decision
- Public Comment
- Schedule meeting

## May 1, 2006 Meeting Summary

The Task Force made no change to the May 1 meeting summary.

## HJR 3 Update

Gerald Mueller reported that in response to his inquiry, Mary Sexton emailed him that the meeting between the state and the Tribes to discuss the Hungry Horse as a source of water for additional water development in the Clark Fork basin is scheduled for June 6. No additional progress towards negotiations with the Bureau of Reclamation (BOR) has occurred. Mr. Mueller reported that he and Mike McLane have been requested to report to the Environmental Quality Council in mid-July. At this point, the only progress to report is the briefing by the BOR about its models for scheduling water deliveries out of Hungry Horse.

## Ground Water Conferences

Conference Funding - Mike McLane reported that three sources of funding exist for the Task Force's two ground water conferences: the RIT funds made available by DNRC, unexpended Task Force appropriations, and conference fees. The amount of the RIT funds is shown in the following table:

**RIT Funding Allocations**

Funding Category	Activity	Amount
Technical Conference	Bureau of Mines White Paper	\$5,000
	Event expenses (speakers, summary report, printing, meals, rooms, etc.)	\$5,000
Policy Conference	Event expenses (speakers, summary report, printing, meals, rooms, etc.)	\$3,500
Task Force Administration	Conference planning and facilitation and Task Force meals and mileage	\$3,000
Clark Fork Basin Round table	Facilitation, planning, & event expenses	\$10,000
Total		\$26,500

The Clark Fork Basin Round table is intended to be a meeting of all watershed groups in the basin. Such a meeting was proposed in the *Clark Fork Basin Watershed Management Plan*. This meeting, however, would not be related directly to the ground water conferences.

Conference Budgets - Mike McLane also provided the following preliminary budgets for the technical and policy conferences.

**Technical Conference Budget**

Expenses		Revenues	
Item	Amount	Source	Amount
Facilitation and planning	\$1,000	RIT	\$11,500
MBMG presentation	\$5,700	Registration Fee (100 @ \$25)	\$2,500
Pre-conference paper printing	\$500		
Room rental and audio visual charges	\$500		
Promotion	\$100		
Modeling tools panel speakers	\$1,700		
Assessment methodology speakers	\$1,400		
Meals and snacks	\$1,500		

Summary report preparation	\$1,100		
Summary report printing & distribution	\$500		
Total	\$14,000		\$14,000

### Policy Conference Budget

Expenses		Revenues	
Item	Amount	Source	Amount
Facilitation and planning	\$1,000	RIT	\$5,000
Promotion	\$100	Registration Fee (100 @ \$25)	\$2,500
Speakers	\$2,500	Unspent Task Force FY 2006 funds	\$700
Panel mileage	\$700		
Meals and snacks	\$1,500		
Student support	\$800		
Summary report preparation	\$1,100		
Summary report printing & distribution	\$500		
Total	\$8,200		\$8,200

Technical Conference Agenda - The Task Force discussed and agreed to the agenda included below in Appendix 1. For the “Ground Water Modeling Tools” agenda topic, the Task Force agreed to invite a staff modeler at the Montana Bureau of Mines and Geology Dr. Marios A. Sophocleous, who is a senior scientist in geohydrology with the Kansas Geological Survey. For the “Assessment Methodology” panel, the Task Force agreed to invite scientists who have worked on the Snake and Rathdrum aquifers. For the Snake, people that could be invited include Dr. Gary Johnson, Assistant Professor of Geology and Geologic Engineering with University of Idaho at Idaho Falls, or Donna Cosgrove with the Idaho Water Resource Research Institute, University of Idaho. For the Rathdrum aquifer, an invitation could be extended to Rod Caldwell with USGS Helena Office. Mr. Caldwell is now the project chief for the USGS Smith River ground water-surface water interaction study. He formerly worked on the USGS study of the Rathdrum aquifer ground water-surface water interactions. Steve Kilbreath who heads the Subdivision Review Section of the Montana Department of Environmental Quality should also be considered for this panel.

Policy Conference Agenda - The Task Force decided to limit this conference to one day, preferably on November 9. The agenda approved by the Task Force is included below in Appendix 2. Tentative panel members to be invited are listed on the agenda.

### DNRC Surface and Ground Water Working Group Recommendations

Mike McLane reported that the Working Group has met once since the Last Task Force meeting. The discussion focused on two issues. One was a proposal by a Working Group member to revise the permitting process so that an application would be filed with the DNRC, but the decision on the application would be made by an independent entity. The proceeding would be changed from an administrative to something more akin to a judicial process. The Working Group asked for more information about how the process would work. Also considered was an

amendment to the existing 35 gallons per minute - 10 acre feet permit exemption for domestic wells. The ideas included reducing the volume cap, allowing the exemption for only the first five lots in a subdivision, and requiring individual lot owners in a subdivision to pay into an augmentation account. The funds would be used to augment the total consumption of all wells in the subdivision. Again, the Working Group took no action on these proposals.

### **Thomson Falls Cogeneration Water Rights Decision**

Gerald Mueller passed out a copy of the proposed decision for the surface water right permit application submitted by Thompson River Lumber Company. The proposed decision issued by the DNRC hearings examiner is to deny the permit. The basis for the denial is the applicant's failure to prove that "water can reasonably be considered legally available." Continuing to quote from the proposed decision:

Applicant has shown in non-drought years sufficient unappropriated water will be physically available at the point of diversion to supply the amount requested only for 16 to 24 days throughout the period of appropriation (January 1 through December 31). An applicant must prove that, at least in some years, sufficient unappropriated water will be physically available at the point of diversion to supply the amount requested throughout the period of appropriation, and that at least in some years, no legitimate calls for water will be made on him by a senior appropriator. In the Matter of Application for Beneficial Water Use Permit No. 81705-g76F by Hanson (1992). However, Applicant has not shown that legitimate calls for water will not be made on him by a senior appropriator in at least some years. Here, Applicant could expect calls for water for all but 16 to 24 days of each year. Mont. Code Ann. § 85-2-311(1)(a)(ii). *See* Finding of Fact Nos. 7, 8.

6. The Applicant has not proven that the water rights of prior appropriators under existing water rights, certificates, permits, or state reservations will not be adversely affected when conditioned according to the plan to have downstream senior appropriators call the source when their rights are not being met. In the situation at hand, the evidence is that Objector Avista will not likely be able to look at their measuring gauge and know that river flows have been reduced by 250 gpm (i.e. that Applicant's pump is running). That does not mean Objector Avista is not adversely affected. At flows less than 50,000 cfs, Objector Avista would be short 250 gpm at times Applicant's pump is running. Objector Avista would have to call the Applicant to find out if Applicant's pumps are running. Applicant's plan would have Avista call Applicant to see if they are pumping, then decide if they must call the source rather than have the Applicant call to make sure water is available for use prior to turning on the pump. The burden in Applicant's plan is on the wrong appropriator. Avista would be short 250 gpm in all but 16-24 days per year when their reservoir is full and the project is spilling water.

Task Force members stated that this decision appears to reject a test that an adverse impact must be measurable. As a result, this decision would appear to close the basin to new water rights permits for surface water and ground water immediately and directly connected to surface water. Possible next steps in this permitting process are:

- The applicant may file a petition to the DRNC asking that the decision be reconsidered;
- The DRNC will hold a hearing on the petition limited to consideration of the facts in the record;
- The DNRC will write a final order, which then is subject to judicial review in district court.

### **Public Comment**

There was no additional comment.

## **Task Force Member Assignments**

Task Force members agreed to identify individuals or organizations that should be invited to participate in the technical and policy conferences and to send the names to Gerald Mueller ([gmueller@montana.com](mailto:gmueller@montana.com) or 440 Evans, Missoula, MT 59801).

## **Next Meeting**

The next meeting scheduled for the first Thursday in July 6, 2006. Jack Stultz will be invited to participate in the next meeting to discuss actions by downstream states to increase use of Columbia River water and the possibility of creating a new formal interstate body to consider water quantity issues.



**Appendix 1**  
**Managing Clark Fork River Basin Ground Water**  
**Preliminary Technical Conference Agenda**  
**September 27, 2006**

- I. 8:00 AM, Registration**
- II. 8:30 AM, Welcome**  
Gerald Mueller will welcome participants, introduce the Task Force, and set out the conference goals and agenda.
- III. 8:45 AM, What Do We Know About Clark Fork Basin Ground Water?**  
Tom Patton, Montana Bureau of Mines and Geology will overview existing ground water information for the Clark Fork River basin by sub-basin.
- IV. 9:45 AM, Break**
- V. 10:00 AM, Ground Water Modeling Tools**  
A panel of speakers will present modeling tools in use to define and/or predict the nature and extent of surface and ground water connections on a sub-basin scale. Possible speakers include Dr. Marios A. Sophocleous, Senior Scientist in geohydrology with the Kansas Geological Survey and a modeler from the Montana Bureau of Mines and Geology.
- VI. Noon, Lunch**  
Lunch will be provided to conference participants (UM sandwich buffet). Luncheon speaker (Mary Sexton, Tim Hall?) will address TU vs DNRC and its significance to ground water development.
- VII. 1:00 PM, Assessment Methodologies**  
A panel of speakers will present and discuss methodologies used to assess surface and/or depletions ground water depletions from ground water appropriations. Possible speakers include: Dr. Gary Johnson, Assistant Professor of Geology and Geologic Engineering, University of Idaho at Idaho Falls; Donna Cosgrove, Idaho Water Resource Research Institute; University of Idaho; Rod Caldwell, USGS Helena Office; and Steve Kilbreath, Subdivision Review Section, the Montana Department of Environmental Quality.
- VIII. 3:00 PM, Break.**
- IX. 3:15 PM, Ground Water Management Needs**  
Marc Spratt will lead a discussion with conference participants of what information, tools, and assessment methodologies are needed to management ground water effectively in the Clark Fork River basin.
- X. 4:00 PM, Wrap Up**  
A Task Force member (Jim Dinsmore?) will summarize conference and discuss next steps.
- XI. 4:30 PM, Adjourn.**

**Appendix 2**  
**Managing Clark Fork River Basin Ground Water**  
**Preliminary Policy Conference Agenda**  
**November 9, 2006**

**I. 8:00 AM, Registration**

**II. 8:30 AM, Welcome**

Gerald Mueller will welcome participants, introduce the Task Force, and set out the conference goals and agenda.

**III. 8:45 AM, Clark Fork Basin Economic and Demographic Trends**

Dr. Larry Swanson, Center for the Rocky Mountain West, (to be invited) will overview present and projected future Clark Fork basin population levels and economic trends.

**IV. 9:45 AM, Break**

**V. 10:00 AM, Effect of Population and Economic Growth on Water Use**

Robert Glennon Morris K. Udall Professor of Law and Public Policy (Confirmed)

**VI. 11:00 AM, Water Supply Assessment**

The first of three panels will address present and future water supply issues/problems.

Panel 1 - Tribal and local government elected officials (e.g., Chairman Steele, Mayors of Polson and Thomson Falls, and Commissioners from Ravalli and Deer Lodge Counties) will answer the following questions:

- What water supply problems are you currently experiencing?
- What water supply problems do you foresee over the next 50 years?
- How are you addressing these problems?

**VI. Noon, Lunch**

Luncheon Speaker - Governor Schweitzer (To be invited.)

**VII. 1:00 PM, Water Supply Assessment Continued**

Panel 2 - Tribal and local government planners (e.g., Clayton Matt; Jon Sesso, Butte Silver Bow Planner; Whitefish planner; Dick Hoehne, Philipsburg) will address the following questions:

- What planning activities are underway to meet future water demands?
- What are your current and projected water supply needs?
- What planning and management issues do you face?
- What tools do you need to address them?

**VIII. 2:00 PM, Water Supply Assessment Continued**

Panel 3 - Water users/interests (irrigation districts, private water supply company, and realtors) will address the following questions

- What water supply problems are you currently experiencing?
- What water supply challenge do you foresee over the next 50 years?
- How are you addressing these problems/challenges?

**IX. 3:00 PM, Break.**

**X. 3:15 PM, Policy and Administrative Tools**

Dr. David Shively and Mike McLane will address policy and administrative tools for allocating ground water while protecting surface water conditions (i.e. augmentation, ground water storage, water banking, water trades etc.)

**XI. 4:15 PM, Conference Wrap Up**

A Task Force member (e.g., Jim Dinsmore) will summarize conference and discuss next steps.

**XII. 4:45 PM, Adjourn.**